

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALFRED WHITE,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

96-CR-01123-2 (SHS)

20-CV-4972 (SHS)

TRANSFER ORDER

SIDNEY H. STEIN, United States District Judge:

Movant, currently incarcerated at FCI Fairton, brings this motion under 28 U.S.C. § 2255, seeking to challenge his sentence entered in *United States v. White*, No. 96-CR-1123 (SHS) (S.D.N.Y. April 13, 1998). He bases his challenge on [United States v. Davis, 139 S. Ct. 2319 \(2019\)](#), which held that the “residual clause” definition of a violent felony in § 924(c)(3)(B) is unconstitutionally vague. For the reason set forth below, the Court transfers this action to the United States Court of Appeals for the Second Circuit.

Movant seeks to challenge his sentence. The Court’s records show that Movant has previously filed a motion under § 2255 challenging the same conviction and sentence. *See White v. United States*, No. 99-CV-11809 (SHS).¹ Because Movant’s previous motion under § 2255 was decided on the merits, this application is a second or successive motion. *See Corrao v. United States*, 152 F.3d 188, 191 (2d Cir. 1998). Before a second or successive § 2255 motion is filed in

¹ Movant has two motions pending in the Second Circuit seeking leave to file a second or successive § 2255 motion. *See White v. United States*, 20-1519 (2d Cir.); *White v. United States*, 20-2263 (2d Cir.) In 2016, Movant filed a § 2255 motion in this Court, which was transferred to the Second Circuit. *See White v. United States*, No. 16-CV-5222 (SHS) (S.D.N.Y. Aug. 3, 2016). On October 5, 2016, the Second Circuit dismissed that matter as duplicative of 20-1519. *See White v. United States*, 16-2712 (2d Cir. Oct. 5, 2016) (granting motion to withdraw).

the district court, authorization from the appropriate court of appeals is required. 28 U.S.C. § 2244(b)(3)(A).

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Movant, noting service on the docket. In the interest of justice, the Court transfers this motion under § 2255 to the United States Court of Appeals for the Second Circuit. *See* 28 U.S.C. § 1631; *see also Liriano v. United States*, 95 F.3d 119, 122-23 (2d Cir. 1996) (*per curiam*). This order closes this case. If the Court of Appeals authorizes Movant to proceed in this matter, he shall move to reopen this case under this civil docket number.

As the motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies, under 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

Dated: New York, New York
July 6, 2020

SO ORDERED

SIDNEY H. STEIN
U.S.D.J.